

## **EXHIBIT F**

### **Designation of Deposition Testimony of Bart Foster**

BARTLETT D. FOSTER  
July 9, 2014

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1                           UNITED STATES DISTRICT COURT  
2                           EASTERN DISTRICT OF MICHIGAN  
3                           SOUTHERN DIVISION  
4  
5                           \_\_\_\_\_

6     In re:   )      Case No. 13-53845  
7     CITY OF DETROIT, MICHIGAN )  
8   )      Chapter 9  
9   )      Debtor   )  
10   )      Hon. Steven W. Rhodes  
11  
12

13                           The Deposition of BARLETT D. FOSTER,  
14                           Taken at 150 W. Jefferson Avenue, Suite 2500,  
15                           Detroit, Michigan,  
16                           Commencing at 4:30 p.m.,  
17                           Wednesday, July 9, 2014,  
18                           Before Melinda S. Moore, CSR-2258.

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1 MS. HATHAWAY: Did he do or do you do?

2 You want actually what he did in this particular  
3 instance, right?

4 MS. BADALAMENTI: Right.

5 THE WITNESS: We were made aware of the  
6 general construct of the intended purchase price,  
7 and probably consulted -- no, definitely consulted  
8 on the applicability of that general construct,  
9 and then were requested to complete an analysis  
10 of -- additional analysis in order to kind of  
11 determine the purchase price.

12 BY MS. BADALAMENTI:

13 Q. So when you said the construct of the purchase  
14 price, what do you mean?

15 A. Our understanding that the original arrangement  
16 for transfer of the asset was to set the purchase  
17 price at a term -- a defined term in the agreement  
18 of system debt. System debt was defined in the  
19 agreement as the investment that DWSD has made in  
20 the facilities being transferred less whatever  
21 amounts that Macomb had paid in sewer rates that  
22 were associated with principal -- not interest,  
23 but principal on debt service that was allocated  
24 to those assets. That was the general construct  
25 of the deal for the purchase price.

1 Q. At the time that you are initially consulted  
2 with, has there already been a determination that  
3 there are certain Macomb-only projects that will  
4 be -- that were assessed in the rates a certain  
5 way and that will or will not be passed along  
6 with the purchase price a certain way?

7 MS. HATHAWAY: Object to the form of  
8 the question. It's vague.

9 THE WITNESS: I don't understand your  
10 question. I'm sorry.

11 BY MS. BADALAMENTI:

12 Q. Was there -- I guess let me ask it this way: You  
13 were involved in the rate calculations at the  
14 time for DWSD; is that the true?

15 A. True.

16 MS. HATHAWAY: When you say "at the  
17 time," what time are we talking about now?

18 BY MS. BADALAMENTI:

19 Q. The four-year time period that -- I guess the  
20 beginning of the 4-year time period that you're  
21 calculating the system debt.

22 During that time period you were  
23 involved in determining the rates, correct?

24 A. That's correct.

25 Q. And you would determine the rates for Macomb?

1 A. The wholesale rates -- wholesale sewer rates  
2 charged by DWSD to Macomb, yes.  
3 Q. What would go into that analysis?  
4 A. Well, there's a rather rigorous analysis for the  
5 DWSD sewer rates that establishes wholesale  
6 charges -- cost allocations and wholesale charges  
7 for all the contract customers of DWSD, including  
8 Macomb. Macomb and to a lesser extent the Clinton  
9 Oakland District of Oakland County were the only  
10 wholesale customers that there were facilities  
11 that DWSD owned, built -- financed, built, owned  
12 and operated specifically for the benefit of one  
13 contract customer. All the other county contract  
14 customers had built their own interceptor systems.  
15 The original arrangement with Detroit and Macomb  
16 and the Clinton Oakland District of Oakland County  
17 was that Detroit would finance, construct, own and  
18 operate what's now the Macomb Interceptor  
19 District, and so in the rate design, there needed  
20 to be a direct assignment of the costs associated  
21 with that -- those facilities to Macomb. That was  
22 part of the rate design at the time.  
23 Q. So the -- when you say that you're going to  
24 determine the investment made by DWSD less the  
25 amounts Macomb paid by the rate, you would know

1 what Macomb was paying towards what debt; would  
2 that be a fair assessment? You would already  
3 have that information?

4 A. That was part of the annual evaluation of rates,  
5 yes.

6 Q. So the rest of what you told me is that there  
7 would be some debt service that was allocated to  
8 Macomb. That would be that debt service that was  
9 allocated to Macomb previously? In other words,  
10 it didn't change for purposes of this analysis?  
11 It was what Macomb was already allocated?

12 MR. RUEGGER: I'll object to the form  
13 of that.

14 MS. HATHAWAY: Me, too.

15 BY MS. BADALAMENTI:

16 Q. Let me ask it a different way. Your analysis of  
17 the investment made by the DWSD less the amounts  
18 Macomb paid by its rates didn't change the rate  
19 or the allocation that Macomb was already paying;  
20 it just calculated what Macomb had paid to date?  
21 Is that a better way of asking it?

22 A. I'm struggling with the way that you characterize  
23 it. I don't think I can confirm exactly what you  
24 said the way that you said it.

25 Q. Well, tell me how did you then determine at the

1 time that you were going to set the system debt  
2 what Macomb had paid via its rates towards  
3 principal, not interest, on the debt service that  
4 was allocated.

5 A. We reviewed the construct of the rates that had  
6 been charged going all the way back to the  
7 mid-80s, and did a retrospective analysis of how  
8 much of that rate was associated with principal on  
9 each one of those -- of the bonds that were  
10 allocated to the Macomb-specific assets.

11 Q. Okay. So to answer that question, did you need  
12 any additional information -- information that  
13 you did not already have or get from engineering  
14 or accounting to come up with that analysis?

15 A. The only additional information we needed was  
16 rate -- records of rate analyses through the  
17 years, much of which was already in our  
18 possession.

19 Q. Okay. Did you have any discussions with the  
20 contract department of the City of Detroit for  
21 any of the information that you need to make this  
22 calculation of system debt? Contracts and grants  
23 department, to be more specific?

24 A. I don't believe so. I don't recall any specific  
25 conversations with contracts and grants.

1 A. The final number on 1368 sinkhole repairs was  
2 established a fair amount of time --- I don't  
3 know -- a year before the final agreement was  
4 reached. A year at least, I would say. Any other  
5 ongoing contracts did not include the sinkhole  
6 repair beyond that time.

7 Q. The totals you were given for that sinkhole  
8 repair are something that's specifically  
9 referenced in the schedules as opposed to  
10 something that went into your calculation of  
11 system debt; is that a fair statement?

12 A. I don't understand the distinction you're drawing.

13 Q. You told me that you calculated system debt by a  
14 specific mathematical method, right?

15 A. Okay.

16 Q. And my question is: Did the analysis of charges  
17 on 1368 go into that same analysis?

18 A. The total charges on the sinkhole repair defined  
19 by 1368 was an input to the calculation.

20 Q. Okay. Do you remember who provided you with the  
21 information -- what that final number was?

22 A. It would have been the DWSD accounting division.

23 Q. And what did they give you when they give you a  
24 total like that? Is it a sheet of paper? A  
25 final pay estimate? What is it that you would

1 receive?

2 A. The records I got -- the records we received from  
3 accounting would generally indicate total amount  
4 on the fixed asset books separated by contractual  
5 services costs or construction contract cost, and  
6 then other indirect costs such as internal labor  
7 cost, allocated overheads, and capital interest --  
8 capitalized interest, those type of things. There  
9 would be four or five fields leading up to a total  
10 investment figure.

11 Q. Are those documents you received in connection  
12 with this calculation something that you still  
13 have?

14 A. I don't know.

15 Q. In any event, was there anything unusual or  
16 different about the calculation that you were  
17 provided on 1368 different than any other time  
18 you had gotten information from DWSD?

19 A. No.

20 Q. Did you question anybody about the information, or  
21 was it just input into your calculation?

22 A. It was input into the calculation. We did make  
23 inquiries to fully understand the nature of what  
24 was being reported.

25 Q. What types of inquiries?

1 A. We wanted to make sure we understood the  
2 capitalized interest piece and what went into the  
3 internal cost piece.

4 Q. Do you remember what the internal cost was?

5 A. I can picture a schedule, but my recollection is  
6 that the total book value for the repairs was in  
7 the low \$60 million range, and that of that --  
8 roughly \$3 million was internal cost and roughly  
9 \$4 million was capitalized interest, which left a  
10 net of \$56 million or so as being the contractual  
11 amounts for that project. That's just from  
12 memory. I haven't looked at it for a while.

13 Q. That's pretty good. You're pretty close. The  
14 documents -- the actual acquisition agreement  
15 references a \$54 million number. Do you know how  
16 it went from 56 to 54?

17 A. Not without looking back at things, no.

18 Q. Okay. What is it that you would need to look at  
19 so I don't put a bunch of things in front of you  
20 that you don't need to see, because I know you  
21 have a plane to catch.

22 A. There are Exhibit 3.8 and I'm sure that there are  
23 somewhere in your records additional calculations  
24 that support that.

25 Q. Were you ever questioned as part of a criminal

1 investigation in connection with the work you  
2 performed for DWSD?

3 A. Can you repeat the question.

4 Q. Were you ever questioned by federal investigators  
5 in connection with your work?

6 A. I was not.

7 MS. BADALAMENTI: Let's mark this as 1.

8 MARKED FOR IDENTIFICATION:

9 DEPOSITION EXHIBIT 1

10 5:18 p.m.

11 BY MS. BADALAMENTI:

12 Q. I've put in front of you -- and we'll just go  
13 through them as quickly as possible, but I put in  
14 front of you what appears to be a report dated  
15 February 6, 2007 from The Foster Group. Do you  
16 recognize the document?

17 A. Yes.

18 Q. What was this document prepared for?

19 A. This document was related to negotiations on the  
20 transfer of the Macomb Interceptor District to  
21 Macomb County that I would characterize were part  
22 of negotiations for adjustments to the system debt  
23 as defined by the original construct of the deal.

24 Q. So I see in here as Exhibit 3 15 Mile and Hayes  
25 Repairs. I see that \$56,861,900 as a total. Is

1           that the total you were provided?

2   A.   That is the -- this is 2007. My belief is that

3           that is the net contractual cost of the repairs

4           which would not include the capitalized interest

5           nor the internal cost that we mentioned a few

6           minutes ago, yes.

7   Q.   Okay. So -- and the footer on the bottom is

8           dated 1/29 of 2007. So by that time you would

9           have had the total project cost?

10   A.   I believe so. I would not want to be definitive

11           about that without looking through records, but I

12           believe so.

13   Q.   Okay. So then the negotiations surrounding

14           Macomb's purchase would have begun prior to -- at

15           least prior to this February 6, 2007 letter?

16   A.   Correct.

17   Q.   Do you know how much prior to this letter?

18   A.   I do not. I could speculate, but I could not be

19           precise.

20   Q.   What would you approximate? If you can

21           approximate --

22   A.   2005 at the earliest, likely 2006.

23   Q.   Were you involved at all in the litigation case

24           that was ongoing before Judge Feikens with

25           respect to some of these issues?

1 conversations, I don't know that I could represent  
2 this memorandum as being definitive as to what led  
3 to that. There were constant conversations going  
4 on looking at some of this information through the  
5 negotiation process.

6 Q. Okay. I am looking at a page in that. The top  
7 of it reads "Table B Debt Reconciliation Table."  
8 Line item 10 has the 54,577,052 total contract  
9 cost per Foster 2009 as one of the items in the  
10 schedule. Do you see that there? It would be  
11 10-F?

12 A. I'm sorry, 10-F? I'm -- oh, the 54,500,000, I see  
13 that number, yes.

14 Q. And that column F is total contract cost per  
15 Foster 2009. Do you know what that is referring  
16 to?

17 MS. HATHAWAY: Is that 9 or 8.

18 THE WITNESS: It's 2009. So later on  
19 in this package, the first page after something  
20 handwritten tab 2, there is an exhibit entitled  
21 Table 1 - Investment Costs of DWSD OMI Assets.

22 BY MS. BADALAMENTI:

23 Q. I found tab 3 but I can't find tab 2: Okay.  
24 Table 1, okay.

25 A. Line 30, CS-1358 15/Hayes repairs, the 54 million

1 Q. Did you review that settlement agreement before  
2 it was entered into?

3 A. Yes, I did.

4 Q. Did you help prepare it?

5 A. I did.

6 Q. There was a letter of intent that was executed in  
7 connection with the purchase or the settlement  
8 agreement. Did you help prepare that?

9 A. I don't recall.

10 Q. What new information, if any, went into your  
11 preparation of the settlement agreement?

12 MS. HATHAWAY: Object to the form of  
13 the question. He didn't prepare the settlement  
14 agreement. He said he helped.

15 THE WITNESS: I'd ask you to define new  
16 information.

17 BY MS. BADALAMENTI:

18 Q. Did you need any new information about the  
19 contracts, the projects? Did you recalculate the  
20 system debt? Or did you simply look at the  
21 tables and schedules that you had already  
22 calculated and incorporate that information?

23 A. My recollection is that we did not make any  
24 material changes to the system debt portion of the  
25 purchase price, but rather the global settlement

1 affected adjustments to the system debt that then  
2 became part of the purchase price. That had  
3 nothing to do with the original premise of system  
4 debt.

5 Q. Okay. Was it an agreed upon calculation of that  
6 amount? First of all, what was that amount? Do  
7 you remember -- the global settlement amount?

8 A. The global settlement had several facets to it. I  
9 believe on recollection that the effect to the  
10 Macomb Interceptor purchase price was an offset  
11 from system debt in the neighborhood of \$17  
12 million dollars.

13 Q. And what was the total of system debt, if you can  
14 remember?

15 A. Approximate figures, I think the system debt  
16 cost -- system debt calculation was \$107 million,  
17 and after an offset of roughly \$17 million, got  
18 down to 91 million -- \$90 million and change.

19 Q. Was that calculated price agreed upon by  
20 everybody? In other words, at the point in time  
21 that that is the total debt you're calculating,  
22 does Macomb dispute that that's the total? Or  
23 does the global settlement or the offset of 17  
24 million go to something else?

25 MS. HATHAWAY: Object to the form of

BARTLETT D. FOSTER  
July 9, 2014

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1 CERTIFICATE OF NOTARY

2 STATE OF MICHIGAN )  
3 ) SS  
4 COUNTY OF MACOMB )

5

6 I, MELINDA S. MOORE, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing  
9 questions and answers were recorded by me  
10 stenographically and reduced to computer  
11 transcription; that this is a true, full and  
12 correct transcript of my stenographic notes so  
13 taken; and that I am not related to, nor of  
14 counsel to, either party nor interested in the  
15 event of this cause.

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*Melinda S. Moore*



MELINDA S. MOORE, CSR-2258

Notary Public,

Macomb County, Michigan

My Commission expires: September 6, 2016